

Decision 01-01-056 January 26, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking into the operation of interruptible load programs offered by Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company and the effect of these programs on energy prices, other demand responsiveness programs, and the reliability of the electric system.

Rulemaking 00-10-002  
(Filed October 5, 2000)

**INTERIM OPINION**

**1. Summary**

This interim opinion grants limited waiver of penalties for two customers on interruptible rate programs in response to the recommendation of the California Energy Commission (CEC) based on a threat to public health and safety. Further, it waives, effective today, both the penalties that customers on interruptible rate programs would incur for failing to curtail when requested, and the tolling of hours and number of curtailment events by utilities against the maximum numbers for these programs. The utilities will continue to notify interruptible customers of times when curtailment would otherwise occur, and we fully expect all interruptible customers to voluntarily respond to the maximum extent feasible to reduce their energy usage to assist California in maintaining a reliable electric system.

The Commission today directs that utilities (1) not bill customers for already incurred penalties, and (2) track all penalties in a memorandum account (including those already paid, outstanding, and yet to be billed, from October 1, 2000 to the present). The Commission will begin immediate proceedings to address waiver of past penalties and encourages interruptible customers to provide written comments pursuant to a survey the Commission will mail next week regarding interruptible program options.

## **2. Background**

The Chairman of the CEC, pursuant to the CEC's role under Public Resources Code Section 25701, informed the Commission President by letter dated January 19, 2001 of a situation that threatens public health and safety. The situation is the availability and price of petroleum products in California as a result of recent curtailments of electricity under nonfirm rate programs.

Specifically, the CEC Chairman reported that multiple recent curtailments of electricity had resulted in the inability of pipeline companies to deliver petroleum products. This was directly leading to spot shortages of gasoline and diesel fuel at a number of California terminals. Further, the Chairman stated that production of gasoline, diesel fuel and jet fuel had been curtailed at over half of California's refineries. Curtailments were necessary because of the inability of these refineries to ship their products through the distribution system and fill storage tanks. In addition, he indicated that fuel prices had risen sharply across the State, and were expected to continue increasing over the next several days. According to the CEC, price spikes due to significant supply interruptions such as this usually last for several weeks. The CEC studied alternatives to continued use of the pipelines, but found them unworkable.

The CEC Chairman also stated that gasoline and diesel supplies at terminals were becoming scarce, with a number of terminals already out of fuel. Additional terminals were expected to run out of fuel by the end of the weekend (i.e., January 21, 2001). Moreover, while half of the refineries in California had reduced operations, other refiners were expected to follow suit in a few days if pipelines continued to be curtailed (having also run out of storage room for products produced but which they were unable to ship through pipelines). Finally, inventories of jet fuel at San Francisco and Los Angeles airports were extremely low, according to the CEC.

As a result, the CEC Chairman stated that:

“...the Energy Commission strongly recommends that [the two pipeline companies transporting the majority of gasoline and diesel fuel in California] be allowed to continue their pumping operations uninterrupted for a period of 7 consecutive days (January 19-26). If this action is taken, supplies at terminals can be replenished to near normal levels and almost all of California’s refineries can resume production to an adequate level of operation.”

The two pipeline companies are SFPP, Inc. and GATX. By letters dated January 19, 20, and 23, 2001, the Commission President reminded each company that it is a public utility, and that each has an obligation to serve its customers. The President acknowledged the conflict between their duty to provide service as a public utility, and their obligation under the interruptible rate program (i.e., to curtail their use of electricity when asked during Stage 2 emergencies, or pay potentially significant penalties for continuing to use electricity). The President stated that should a choice become necessary to continue their operations during a curtailment call, the Commission would recognize their need to comply with their duty to provide service during times of emergency as declared by the CEC.

As a result, the President waived penalties through January 26, 2001 that would otherwise attach to their continued use of electricity as they served their pipeline customers.

### **3. Discussion**

We agree with the CEC Chairman and the Commission President regarding the risk to the public health and safety, and the necessary action. That is, public health and safety have been, and continue to be, threatened by the serious potential unavailability and increasing price of petroleum products in California. This continuing potential emergency results from recent, and potential future, curtailments of electricity under electricity nonfirm rate programs.

We also recognize the conflict faced by these two companies, as identified by the Commission President. That is, these companies must comply with their public utility obligation to provide service to their customers, even during times of emergency. The emergency reported by the CEC, however, arises not only from unavailability of supply, but increases in price. We cannot make the petroleum price situation, and the resulting emergency, worse by requiring these companies to incur penalties for continuing to serve their pipeline customers after notice by the CEC on January 19, 2001.<sup>1</sup> Therefore, we waive penalties incurred beginning January 19, 2001 for these two pipeline companies, including the associated facilities needed for pipeline operations. Further, for the reasons

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<sup>1</sup> Bills for tariffed services, including penalties, are mailed to customers after electricity service is consumed (or not consumed), and the meter is read. The bill for penalties incurred beginning January 19, 2001 will not be payable immediately, but the effect on the emergency identified by the CEC Chairman will result if we do not waive the penalties.

explained below, we suspend penalties and take other actions for all interruptible customers, until further notice.

Not only are these two pipeline companies faced with an unacceptable choice, all customers on interruptible rates face increasingly serious potential consequences as they are called upon repeatedly in the same day. Customers voluntarily agreed to participate in interruptible programs. These programs involved the possibility of 20 to 30 curtailments per year for up to 150 hours, in exchange for significantly reduced electric rates. Nonetheless, the Commission has received letters from many customers who have been caught unprepared for the frequency and duration of calls to curtail their use of electricity.<sup>2</sup> Many state that they expected to be curtailed infrequently, primarily during the summer season when electricity demand generally peaks relative to supply. They indicate that they did not contemplate interruptions during the winter (off-peak) season. California, however, has been in many Stage 2 and 3 emergencies since October 2000, including nearly all of January 2001.

Interruptible customers now face increasingly serious consequences of being on interruptible tariffs, despite their voluntary choice to have subscribed for interruptible service, and their obligation to abide by the terms of the tariff. In fact, it appears that many customers, for a variety of reasons, chose to participate in the interruptible program despite being relatively unsuited to meet the program's requirements, at least as those requirements have occurred in late 2000 and early 2001. The continuing electricity crisis, however, requires that we reassess the operation of our interruptible programs.

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<sup>2</sup> These customers include hospitals, prisons, schools, college districts, water districts, shopping districts, newspapers, hotels, rubber manufacturers, and cheese producers.

These customers face the ongoing choice of curtailing electric service, or paying significant penalties. If they curtail service, for many customers this means closing their operations or businesses, with deleterious effects on themselves and the California economy. The harmful effects include lost sales, lost revenues, lost productivity, foregone wages, layoffs, unemployment, business not expanding in California, and businesses moving out of California. For some customers, such as hospitals and prisons, this choice threatens public health and safety. Alternatively, customers can continue to operate and incur large penalties. These penalties may threaten the financial integrity of their operations and businesses, and have the same deleterious effects on the California economy.

Neither alternative is acceptable. Customers essentially face an irreconcilable dilemma. Temporary suspension of the penalties is preferable to customers continuing to face this unacceptable choice. As a result, we suspend until further order all penalties that would otherwise be incurred effective today and going forward for all customers on interruptible schedules. By suspension we mean that the appropriate portions of the tariffs are withdrawn. As a result, utilities will not bill customer for penalties, nor track them for possible future payment.

Suspension of penalties also means that we should suspend the tolling of hours, number of curtailment events, and other aspects of the program. That is, in exchange for reduced rates, the program limits the maximum number of times per year a utility may request that a customer curtail. It also limits the total annual hours of interruption. Absent suspension of penalties, customer failure to respond exposes the customer to penalties. It would be unreasonable to suspend the penalties but continue to exhaust the program by allowing the utility to count hours and events against program totals.

Instead, the utilities will continue to notify customers of times when an interruptible curtailment would occur. We fully expect all interruptible customers to voluntarily respond to the maximum extent feasible to reduce their energy usage to assist California in maintaining a reliable electric system when these events occur.

Interruptible programs provide a valuable resource to assist California meet its reliability needs, and should be preserved and used wisely. The events of the past several months show the need for the Commission to revisit the interruptible program. The Energy Division will soon issue a report addressing these issues. This provides further support for our actions today, giving us time to revisit, modify and redesign programs as necessary.

To implement today's order, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) shall each file an advice letter within 10 days suspending the appropriate portions of their interruptible tariffs. The Director of the Energy Division will review the advice letters and tariffs for compliance with this decision. The Director of the Energy Division may require supplemental advice letters to bring the tariffs into compliance with this decision. Once approved by the Director of the Energy Division, the advice letters and tariffs will be effective as of today.

For the purpose of implementing the limited waiver of penalties for the two public utility pipelines and their associated facilities, PG&E and SCE are authorized to deviate from the tariffs. The deviation allows waiver of penalties beginning January 19, 2001 for SFPP, Inc., and GATX, with suspension beginning January 26, 2001 consistent with that for all customers.

We believe all customers of investor owned utilities must, and will, continue to act responsibly. Accordingly, we strongly encourage every such

customer—including those on interruptible rate schedules—to curtail all nonessential use during Stage 2 emergencies, whether or not interruptible rate penalties are suspended.

As part of the reassessment of the interruptible program, we will give further consideration to penalties incurred from October 1, 2000 to the present. To have the opportunity to do this, utilities should (1) not bill customers for already incurred penalties and (2) track all penalties in a memorandum account (including those already paid, outstanding, and yet to be billed, from October 1, 2000 to the present). We will hold further proceedings on this issue.

#### **4. Need for Expedited Consideration**

Government Code Section 11125.3(a)(2) and Rule 79(b)(2) of the Commission's Rules of Practice and Procedure provide in relevant part that:

“...a state body may take action on items of business not appearing on the posted agenda...(2) upon a determination by a two-thirds vote of the state body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there exists a need to take immediate action and that the need for action came to the attention of the state body subsequent to the agenda being posted as specified in Section 11125.” (Gov. Code Section 11125.3(a)(2).)

“A matter not appearing on the agenda of the meeting will not be decided unless...[t]he Commission determines by two-thirds majority (or, if less than two-thirds of the Commissioners are present, by a unanimous vote of those Commissioners present) that a need to take immediate action exists and that the need for this action came to the Commission's attention after the agenda for the meeting was issued.” (Rule 79(b)(2).)

A need to take immediate action exists for the reasons described above. That is, the CEC Chairman reports a threat to public health and safety



caused by operation of the electricity nonfirm rate program, with a strong recommendation to take immediate action. This was brought to our attention after the agenda for the last regularly scheduled meeting was issued, and less than 10 days before today's meeting.<sup>3</sup> Further, with the continuation, if not deepening, of California's energy crisis, all customers on interruptible rate programs are faced with an irreconcilable dilemma of increasingly serious consequences to themselves and the California economy. These consequences jeopardize the public health, safety and welfare. The gravity of this situation came to our attention January 19, 2001 as we considered the strong recommendation of the CEC in light of the worsening energy crisis.

### **Findings of Fact**

1. The CEC Chairman reported to the Commission President on January 19, 2001 of a threat to public health and safety.
2. The threat results from the availability and price of petroleum products in California due to recent curtailments of electricity under nonfirm rate programs.
3. The CEC strongly recommended that the two pipeline companies transporting the majority of fuel in California (SFPP, Inc., and GATX) be allowed to continue their pumping operations uninterrupted for a period of 7 consecutive days.
4. Public health and safety have been, and continue to be, threatened by the serious potential unavailability and increasing price of petroleum products in California resulting from recent, and potential future, curtailments of electricity under electricity nonfirm rate programs.

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<sup>3</sup> The agenda was mailed on January 8, 2001 for the last regularly scheduled Commission meeting on January 18, 2001.

5. The petroleum price situation and emergency will be made worse if the two pipeline companies transporting the majority of fuel in California are required to pay penalties for continuing to serve their pipeline customers when otherwise called to curtail electricity use during a Stage 2 emergency after notice by the CEC on January 19, 2001.

6. The Commission has received letters from many customers who have been caught unprepared for the frequency and duration of calls to curtail their use of electricity.

7. California has been in dozens of Stage 2 and 3 emergencies since October 2000, including nearly every day of January 2001.

8. Customers on interruptible rate schedules are faced with an increasingly irreconcilable dilemma: either curtail their electric service or pay large penalties, either of which cause increasingly deleterious effects on themselves and the California economy, including jeopardizing the public health, safety and welfare.

9. Temporary suspension of the interruptible program is preferable to customers continuing to face increasingly unacceptable choices, and allows time for the Commission to modify the programs so that they provide the maximum benefit not only to affected businesses but to all Californians.

10. There is a need to take immediate action, due to the threat to the public health, safety and welfare.

11. This threat was first brought to our attention by the CEC on January 19, 2001, after the agenda was mailed on January 8, 2001 for the last regularly scheduled Commission meeting (which was held on January 18, 2001).

12. The gravity of the situation regarding all interruptible customers came to our attention as we considered the January 19, 2001 strong recommendation of the CEC in light of the worsening energy crisis.

13. Reassessment of the interruptible program includes review of penalties paid by customers who did not curtail when asked from October 1, 2000 to the present.

### **Conclusions of Law**

1. PG&E, SCE, and SDG&E should file an advice letter with revised tariffs within 10 days.

2. The advice letter and revised tariffs should suspend the penalty provisions for interruptible electricity service customers when the customer fails to curtail electricity use at the request of the utility, as well as suspend the tolling of hours and number of events against program totals, and suspend other related program aspects.

3. The advice letters and tariffs should be effective today unless suspended by the Director of the Energy Division.

4. PG&E and SCE should be authorized to deviate from existing and revised tariffs for the two public utility pipelines - SFPP, Inc., GATX, including associated facilities necessary for the operation of the pipelines - by waiving penalties incurred beginning January 19, 2001 (with suspension of penalties the same as for all customers beginning January 26, 2001).

5. PG&E, SCE and SDG&E should not bill customers for already incurred penalties that have not yet been paid.

6. PG&E, SCE and SDG&E should each create a memorandum account. The memorandum account should track all penalties paid and due under their interruptible tariffs from October 1, 2000 to the present (including those already paid, outstanding, and not yet billed). It should not include tracking of any penalties that are suspended and waived effective today and going forward.

7. This order should be effective today so that the threat to the public health, safety and welfare can be addressed immediately.

### **INTERIM ORDER**

#### **IT IS ORDERED** that:

1. Within 10 days of the date of this order, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) shall each file, in conformance with General Order 96-A, an advice letter with revised tariffs. The revised tariffs shall suspend penalty provisions for interruptible electricity service customers when the customer fails to curtail at the request of the utility. It shall also suspend tolling of hours and number of curtailment events against program maximums, and any related elements of the tariffs. The Director of the Energy Division shall review the advice letters and tariffs for compliance with this order, and shall require supplemental advice letters as necessary to bring the tariffs into compliance with this order. The advice letter and revised tariffs shall be effective today, unless suspended by the Director of the Energy Division.

2. PG&E and SCE are authorized to deviate from existing and revised tariffs for two public utility pipeline companies: SFPP, Inc., and GATX. Penalties otherwise incurred by these two public utilities for failing to curtail when asked shall be waived beginning January 19, 2001. This shall include electricity for pipeline operations, and associated facilities needed for pipeline operations. Ongoing penalties are suspended effective today, as with all interruptible service customers.

3. Within 20 days of the date of this order, PG&E, SCE and SDG&E shall notify each customer on an interruptible rate tariff affected by today's order of

the suspension of the penalty provision and other changes to the interruptible tariff effective today. In addition, separate notice shall be given to the two public utility pipeline companies by their respective serving utilities of the deviation authorized beginning January 19, 2001.

4. PG&E, SCE and SDG&E shall not bill customers for already incurred but unpaid penalties under interruptible tariffs. PG&E, SCE and SDG&E shall each create a memorandum account. The memorandum accounts shall track all penalties, including those already paid, outstanding, and yet to be billed, from October 1, 2000 to the present.

5. This proceeding remains open for consideration of issues stated in the December 12, 2000 Scoping Memo and Ruling of the Presiding Officer and Assigned Commissioner, and the disposition of amounts in the memorandum account.

This order is effective today.

Dated January 26, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President

CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.

Commissioner Richard A. Bilas, being necessarily absent, did not participate.